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OGC 73-2034

6 November 1973

MEMORANDUM FOR: Office of Legislative Counsel

SUBJECT : Emergency Powers Statutes

REFERENCE : Memorandum for Government Agencies fr Special Committee on the Termination of the National Emergency, United States Senate, dtd 14 September 1973

1. Referent memorandum transmits a report of the Special Committee entitled "Emergency Power Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency" and requests the recipients to study the report in order to determine whether

a. there are emergency statutes that need to be added to the compilation;

b. there are any statutes which can be repealed because they are obsolete;

c. there are any statutes which are essential to the regular functioning of the Government and should therefore be recast as permanent legislation;

d. there are statutes which should be retained as emergency statutes, but amended to meet present circumstances.

OGC Has Reviewed

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5. We assume the Committee uses the term "permanent" to mean legislation that would be in force at all times as opposed to legislation that is to be used only when an emergency is declared. The use of the word "permanent" in this sense would not then denote legislation that necessarily lacked an expiration date. In reviewing the statutes that the Special Committee identified and compiled for examination, we identified eight sections that might have some impact on the Agency as follows:

a. 5 U.S.C. 5564(g) authorizes the head of an agency, when he determines that an emergency exists and that a sale would be in the best interest of the United States, to sell either publicly or privately any motor vehicle or other bulky item of household or personal nature of an employee;

b. 18 U.S.C. 793, 794 and 798 are three sections dealing with the crime of espionage, including disclosure of classified information;

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c. 18 U.S.C. 2511 prohibits interceptions and disclosure of wire or oral communications; however, paragraph 3 of that section states that these prohibitions do not limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities;

d. 26 U.S.C. 7508 provides that the time of service of any individual performing combatant activities or other specified acts in the Armed Forces or in support of such forces in an area designated by the President as a "combat zone" shall be disregarded in determining the period for filing certain tax returns;

e. 35 U.S.C. 181 provides for keeping secret an invention whose publication or disclosure by the granting of a patent therefor would be detrimental to the national security;

f. 44 U.S.C. 3311 provides that the head of an agency may authorize the destruction of records outside the United States in time of war or when hostile action seems imminent.

6. Of these eight statutory provisions, four are derived from the criminal law sections of Title 18. As you know, the whole of Title 18 is currently under considerable review; thus, this paper will not consider those provisions further or reiterate the positions that we have developed together on the provisions of that Title. FOIAB5

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8. While we have not found specific authorities that the Agency might use in lieu of 5 U.S.C. 5564(g) and 26 U.S.C. 7508, it is our view that the Agency does not frequently face the problems that these statutory provisions were intended to combat.

8. For the reasons discussed herein, it is the opinion of this Office that the statutory provisions under consideration by the Special Committee, with the exception of those Title 18 provisions, have such an indirect impact on the Agency and its operations that we see no requirement to press for any particular position in terms of their repeal, modification or retention. In each and every case there is a more direct impact on one or more other Government entities such that we see no reason to object to whatever they recommend with regard to the disposition of these provisions.

Office of General Counsel

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